

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOSHUA SIMONS,

Plaintiff,

Case No. 1:20-cv-170

Honorable Janet T. Neff

v.

HEIDI E. WASHINGTON et al.,

Defendants.

ORDER TO PROCEED IN FORMA PAUPERIS
WITHOUT PAYMENT OF AN INITIAL FEE

This is a civil rights action brought by a state prisoner under 42 U.S.C. § 1983. Plaintiff has sought leave to proceed *in forma pauperis* in compliance with 28 U.S.C. § 1915(a). The Court grants his motion. The Court must nevertheless require payment of the entire filing fee in installments, in accordance with 28 U.S.C. § 1915(b)(1). *See McGore v. Wrigglesworth*, 114 F.3d 601, 604 (6th Cir. 1997), *overruled in other part by LaFountain v. Harry*, 716 F.3d 944, 951 (6th Cir. 2013); *Hampton v. Hobbs*, 106 F.3d 1281 (6th Cir. 1997). The civil action filing fee is \$350.00 when leave to proceed *in forma pauperis* is granted. Any subsequent dismissal of Plaintiff's case, even if voluntary, does not negate Plaintiff's responsibility to pay the fee. *McGore*, 114 F.3d at 607.

Normally, a plaintiff must pay a portion of the \$350.00 fee as an initial partial filing fee. The initial partial filing fee is 20 percent of the greater of (a) the average monthly deposits to the prisoner's account; or (b) the average monthly balance in the prisoner's account for the six-month period immediately preceding the filing of the complaint. 28 U.S.C. § 1915(b)(1). In this

case, Plaintiff represents that the Michigan Department of Corrections has refused to provide him an account statement. The Court will, therefore, proceed as if Plaintiff had no funds in his account during the period in question. In addition, Plaintiff's affidavit indicates that he has no assets. Therefore, the Court will not require Plaintiff to pay an initial partial filing fee. *McGore*, 114 F.3d at 606 (citing 28 U.S.C. § 1915(b)(1)).

However, Plaintiff is not relieved from paying the \$350.00 filing fee when funds become available. *McGore*, 114 F.3d at 606. Plaintiff must pay the \$350.00 filing fee through monthly payments of 20 percent of the preceding month's income credited to Plaintiff's prison trust fund account. See 28 U.S.C. § 1915(b)(2). These payments will be forwarded by the agency having custody of Plaintiff to the Clerk of this Court each time the amount in Plaintiff's trust account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2); *McGore*, 114 F.3d at 607; *Hampton*, 106 F.3d at 1284. If the amount in Plaintiff's account is \$10.00 or less, no payment is required for that month. See *Hampton*, 106 F.3d at 1284-85.

The Court shall review the case under 28 U.S.C. §§ 1915(e), 1915A and/or 42 U.S.C. § 1997e(c)(1), as appropriate. After the Court reviews the case, the Court will determine whether dismissal or service of process is appropriate, and will fashion an order accordingly. Should the case be dismissed, voluntarily by Plaintiff or by the Court, Plaintiff shall remain responsible for the filing fee. *McGore*, 114 F.3d at 607. Any pleadings herein served by the United States Marshal shall be at the expense of the United States government. All costs shall be reimbursed to the United States should Plaintiff prevail.

Once service of process has been ordered, Plaintiff shall serve upon Defendants, or if an appearance has been entered by an attorney, upon the attorney, a copy of every further

pleading or other document submitted for consideration by the Court. Plaintiff shall include with the original paper to be filed with the Clerk of the Court a certificate stating the date a true and correct copy of any document was mailed to Defendants or the attorney. Any paper received by a district judge or magistrate judge which has not been filed with the Clerk or which fails to include a certificate of service will be disregarded by the Court. Accordingly,

IT IS ORDERED that leave to proceed *in forma pauperis* is **GRANTED** and Plaintiff may proceed *in forma pauperis* without payment of an initial partial filing fee. Plaintiff will remain liable for the filing fee of \$350.00 as funds become available.

IT IS FURTHER ORDERED that the agency having custody of Plaintiff shall collect the \$350.00 filing fee. As outlined above, each month that the amount in Plaintiff's account exceeds \$10.00, the agency shall collect 20 percent of the preceding month's income and remit that amount to the Clerk of this Court. The agency shall continue to collect monthly payments from Plaintiff's prisoner account until the entire remaining filing fee is paid.

Dated: April 14, 2020

/s/ Janet T. Neff
Janet T. Neff
United States District Judge

SEND REMITTANCES TO:

Clerk, U.S. District Court
399 Federal Bldg.
110 Michigan St., N.W.
Grand Rapids, MI 49503

All checks or other forms of payment shall be payable to "Clerk, U.S. District Court" and must indicate the case number in which the payment is made.